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HOUSE BILL 107

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

INTRODUCED BY

LISA L. LUTZ

AN ACT

RELATING TO CIVIL LAW; ENACTING THE DRUG TRAFFICKER LIABILITY ACT; PROVIDING FOR LEGAL ACTIONS BY CERTAIN PERSONS TO RECOVER DAMAGES FROM DRUG TRAFFICKERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE. -- This act may be cited as the "Drug Trafficker Liability Act".

Section 2. DEFINITIONS. -- As used in the Drug Trafficker Liability Act:

A. "controlled substance" means a "controlled substance", a "counterfeit substance" or a "controlled substance analog" as defined in Section 30-31-2 NMSA 1978;

B. "illegal user" means a person who acquires a controlled substance from a person who traffics in controlled substances;

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1 C. "traffic" means the illegal distribution, sale  
2 or possession with the intent to distribute of a controlled  
3 substance; and

4 D. "trafficker" means a person who traffics.

5 Section 3. CAUSE OF ACTION--PRESUMPTION OF INJURY.--

6 A. A person other than an illegal user may recover  
7 damages from an illegal user's trafficker for an injury that  
8 is proximately caused by an illegal user's use of a controlled  
9 substance.

10 B. An illegal user may recover damages from a  
11 trafficker for an injury that is proximately caused by the  
12 illegal user's use of a controlled substance if:

13 (1) prior to filing the action, the illegal  
14 user discloses to a law enforcement authority the identity of  
15 the trafficker;

16 (2) prior to filing the action, the illegal  
17 user has not used a controlled substance for thirty days; and

18 (3) the illegal user does not use a  
19 controlled substance during the pendency of the action.

20 C. A trafficker is presumed to have injured the  
21 plaintiff and to have acted willfully and wantonly if the  
22 plaintiff is:

23 (1) a parent, legal guardian, child, spouse  
24 or sibling of the illegal user;

25 (2) a person whose mother was the illegal

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1 user while the person was in utero;

2 (3) the illegal user's employer;

3 (4) a person that financially supports or  
4 provides unreimbursed services to or on behalf of the illegal  
5 user; or

6 (5) a neighbor who proves the trafficker's  
7 trafficking caused a decline in the value of the neighbor's  
8 property in the neighborhood of the illegal user.

9 D. The cause of action established by the Drug  
10 Trafficker Liability Act is in addition to and not in lieu of  
11 any other cause of action available to a plaintiff.

12 Section 4. PRESUMPTIONS--EFFECT OF CRIMINAL DRUG  
13 CONVICTION.--

14 A. If a person has been convicted of trafficking  
15 in a controlled substance pursuant to Section 30-31-20 NMSA  
16 1978, that person is presumed to have trafficked in a  
17 controlled substance pursuant to the Drug Trafficker Liability  
18 Act. This presumption is rebuttable.

19 B. A person convicted of violating the Controlled  
20 Substances Act or the federal Comprehensive Drug Abuse  
21 Prevention and Control Act of 1970 by trafficking in a  
22 controlled substance to an illegal user is estopped from  
23 denying trafficking in a controlled substance. The conviction  
24 is also prima facie evidence of the person's trafficking in a  
25 controlled substance during the two years preceding the date

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1 of an act giving rise to the conviction.

2 C. The absence of a conviction of a person against  
3 whom recovery is sought does not bar an action against that  
4 person.

5 Section 5. DAMAGES. --

6 A. A person, other than an illegal user, who is  
7 entitled to a recovery pursuant to the Drug Trafficker  
8 Liability Act may recover the following:

9 (1) economic or noneconomic and exemplary  
10 damages;

11 (2) any pecuniary or nonpecuniary loss  
12 proximately caused by an illegal user's use of a controlled  
13 substance; and

14 (3) reasonable attorney fees and costs.

15 B. An illegal user entitled to recovery under the  
16 Drug Trafficker Liability Act may recover the following:

17 (1) economic damages;

18 (2) any pecuniary loss proximately caused by  
19 an illegal user's use of a controlled substance; and

20 (3) reasonable attorney fees and costs.

21 Section 6. COMPARATIVE NEGLIGENCE. -- An action by an  
22 illegal user pursuant to the Drug Trafficker Liability Act is  
23 governed by the principles of comparative negligence.

24 Negligence shall not be attributed to a plaintiff who is not  
25 an illegal user, unless that plaintiff willfully and knowingly

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1 gave the illegal user the controlled substance or money for  
2 its purchase.

3 Section 7. ATTACHMENT--PROPERTY SUBJECT TO LEVY.--

4 A. After commencing an action under the Drug  
5 Trafficker Liability Act, a plaintiff may seek a writ of  
6 attachment by filing a motion supported by an affidavit  
7 setting forth specific facts showing all of the following:

8 (1) a description of the injury claimed and a  
9 statement that the affiant in good faith believes that the  
10 defendant is liable in a stated amount;

11 (2) the defendant is subject to the judicial  
12 jurisdiction of the state; and

13 (3) after diligent effort, the plaintiff  
14 cannot serve the defendant with process.

15 B. If an attachment action is instituted, a  
16 defendant is entitled to an immediate hearing. Attachment may  
17 be lifted if the defendant demonstrates that the assets will  
18 be available for a potential award or if the defendant posts a  
19 bond sufficient to cover a potential award.

20 C. A person against whom a judgment has been  
21 rendered under the Drug Trafficker Liability Act is not  
22 eligible to exempt any property from process to levy or  
23 process to execute on the judgment. Unless the jury, or the  
24 court if there is no jury, specifically finds otherwise, the  
25 actions for which a person is found liable under the Drug

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1 Trafficker Liability Act are willful and malicious, and the  
2 judgment is not subject to discharge under federal bankruptcy  
3 law.

4 D. An asset shall not be used to satisfy a  
5 judgment under the Drug Trafficker Liability Act if that asset  
6 is named in or has been seized for a forfeiture action by the  
7 state or the United States before a plaintiff commences an  
8 action under that act unless the asset is released after the  
9 forfeiture action or is released by the agency that seized the  
10 asset.

11 Section 8. ACCRUAL OF CAUSE OF ACTION--TOLLING OF STATUTE  
12 OF LIMITATIONS. --

13 A. Except as otherwise provided in this section, a  
14 cause of action accrues under the Drug Trafficker Liability  
15 Act when a person who may recover has reason to know of the  
16 harm and that trafficking in a controlled substance is the  
17 cause of the harm.

18 B. The statute of limitations is tolled while the  
19 person is incapacitated by the use of a controlled substance  
20 to the extent that the person cannot reasonably be expected to  
21 seek recovery under the Drug Trafficker Liability Act or as  
22 otherwise provided by law.

23 C. A person may bring an action for an injury  
24 pursuant to the Drug Trafficker Liability Act within six years  
25 of the date the action accrues.

1           Section 9. PROSECUTIONS--STAYS.--

2           A. A prosecuting attorney may represent the state  
3 or a political subdivision of the state in an action brought  
4 pursuant to the provisions of the Drug Trafficker Liability  
5 Act.

6           B. On motion by a governmental agency involved in  
7 a controlled substance investigation or prosecution, an action  
8 brought pursuant to the Drug Trafficker Liability Act shall be  
9 stayed until the completion of the criminal investigation or  
10 prosecution that gave rise to the motion for a stay of the  
11 action.

12           C. An action shall not be brought pursuant to the  
13 Drug Trafficker Liability Act against a law enforcement  
14 officer or agency, or a person acting in good faith at the  
15 direction of a law enforcement officer or agency, for  
16 participation in illegal marketing of a controlled substance,  
17 if that participation is in the furtherance of an official  
18 investigation.

19           Section 10. SEVERABILITY.--If any part of the Drug  
20 Trafficker Liability Act is held invalid, the remainder or its  
21 application to other situations or persons shall not be  
22 affected.

23           Section 11. EFFECTIVE DATE.--The effective date of the  
24 provisions of this act is July 1, 1998.

1 **FORTY-THIRD LEGISLATURE**  
2 **SECOND SESSION, 1998**  
3  
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6 **January 30, 1998**  
7

8 **Mr. Speaker:**  
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10 **Your JUDICIARY COMMITTEE, to whom has been referred**  
11

12 **HOUSE BILL 107**  
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14 **has had it under consideration and reports same with**  
15 **recommendation that it DO PASS, and thence referred to the**  
16 **APPROPRIATIONS AND FINANCE COMMITTEE.**

17 **Respectfully submitted,**  
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22 **Thomas P. Foy, Chairman**  
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1 FORTY-THIRD LEGISLATURE  
2 SECOND SESSION, 1998

3 HJC/HB 107

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4 Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

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6 (Chief Clerk)

(Chief Clerk)

7  
8 Date \_\_\_\_\_

9  
10 The roll call vote was 5 For 3 Against

11 Yes: 5

12 No: Foy, Garcia, M P., Stewart

13 Excused: Alwin, King, Pederson, Rios, Sanchez,

14 Absent: None

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